

Memorandum 97-51

AB 939: Mediation Confidentiality

The Commission's bill on mediation confidentiality, AB 939 (Ortiz, Ackerman), was passed by the Assembly in April and is now pending in the Senate Judiciary Committee. The bill is likely to be heard after the Legislature reconvenes in August. If negotiations over the state budget are protracted and the Legislature does not recess this week, the hearing may be on July 22, 1997.

The current version of the bill is attached as Exhibit pages 1-15. The bill has been amended twice since the Commission last saw it. The first set of amendments incorporated changes approved by the Commission at its May meeting and addressed concerns raised by the State Bar Committee on Administration of Justice ("CAJ") after that meeting. The staff consulted with the Commission's Chairperson and Vice Chairperson regarding the amendments to meet CAJ's concerns.

The second set of amendments (shown in ~~strikeout~~ and *italics* in the attached version of the bill) stems from a recent meeting focusing on concerns of the Consumer Attorneys of California ("CAOC") and the California Defense Counsel ("CDC"). The meeting was attended by representatives of those organizations, as well as the Chief Counsel of the Senate Judiciary Committee, a consultant to Assembly Member Ortiz, mediator Ron Kelly, a consultant to Assemblyman Ackerman, counsel for the Assembly Republican Caucus, a representative of the Association for California Tort Reform, and a staff attorney from the Commission. A few further amendments have been requested since that meeting.

At this point, the substantive amendments directed to concerns raised by CAOC and CDC appear essential if the bill is to pass. With those amendments, the bill will still implement important reforms, including resolution of the conflict in appellate decisions on confidentiality of an oral agreement reached in mediation, clarification of the procedures for reaching an enforceable agreement, and elimination of ambiguities in the provision restricting a mediator from reporting to the decisionmaker. Briefly, the new amendments are:

- (1) Amendment of proposed Evidence Code Section 1117(a) to read: "Except as provided in subdivision (b), this chapter applies to a mediation as defined in Section 1115." (Exhibit p. 4.) CAOC and

CDC interpreted the previous version of Section 1117(a) as expressing approval of mandatory mediation. The intent was not to express approval of mandatory mediation, but rather to ensure that the confidentiality provisions apply to all mediations. Because “mediation” is broadly defined in Section 1115, Section 1117(a) as amended should effectuate that intent, while omitting language offensive to CAOC and CDC.

(2) Deletion of proposed Section 1118 (Exhibit pp. 4-5), the provision on mediation-arbitration, which has been controversial throughout this study. (See, e.g., Memorandum 97-33 at p. 5 & Exhibit p. 19; Memorandum 96-75 at pp. 11-14.)

(3) Modification of the procedure in Section 1119, such that the recorded oral agreement must be transcribed and the transcript “executed by the parties within 72 hours after it is recorded.” (Exhibit p. 5.) The California Dispute Resolution Council has requested a further change: Instead of requiring that the recording be “transcribed” and the transcript “executed,” Section 1119(d) would require that “the recording is reduced to writing and the writing is signed by the parties within 72 hours after it is recorded.” This apparently noncontroversial revision would be implemented through an author’s amendment at the hearing.

(4) Elimination of language in Sections 1124 and 1125 on how confidentiality applies to partial resolution of a dispute. (Exhibit pp. 7-8.) Those issues would be left to the courts.

(5) Addition of language to Sections 1124 and 1125 clarifying that those provisions do not prevent parties from leaving a mediation without reaching an agreement. Subdivision (c) of each provision now states: “Nothing in this section shall preclude a party from ending the mediation without reaching an agreement.” (Exhibit pp. 7-8.)

(6) Revision of Sections 1123, 1124, and 1125 to make clear that they are subject to Section 1121(a), which essentially prevents a party from shielding a “smoking gun” by using it in a mediation. This would be done at the hearing through an author’s amendment revising the introductory clause of Sections 1123, 1124, and 1125 to read: “Notwithstanding any other provision of this chapter except Section 1121.”

Respectfully submitted,

Barbara S. Gaal
Staff Counsel

AMENDED IN SENATE JULY 10, 1997
AMENDED IN SENATE JUNE 11, 1997
AMENDED IN ASSEMBLY APRIL 9, 1997

CALIFORNIA LEGISLATURE—1997–98 REGULAR SESSION

ASSEMBLY BILL

No. 939

**Introduced by Assembly Member Ortiz
(Principal coauthor: Assembly Member Ackerman)**

February 27, 1997

An act to amend Section 467.5 of the Business and Professions Code, to amend Section 1775.10 of the Code of Civil Procedure, to amend Section 703.5 of, to amend and renumber the heading of Chapter 2 (commencing with Section 1150) of Division 9 of, to add Chapter 2 (commencing with Section 1115) to Division 9 of, and to repeal Sections 1152.5 and 1152.6 of, the Evidence Code, to amend Sections 66032 and 66033 of the Government Code, to amend Sections 10089.80 and 10089.82 of the Insurance Code, to amend Section 65 of the Labor Code, and to amend Section 350 of the Welfare and Institutions Code, relating to mediation.

LEGISLATIVE COUNSEL'S DIGEST

AB 939, as amended, Ortiz. Mediation.

(1) Under existing law, when a person consults a mediator or mediation service for the purpose of retaining mediation services, or when persons agree to conduct and participate in a mediation for the purpose of compromising, settling, or resolving a civil dispute, anything said in the course of the

mediation is not admissible in evidence nor subject to discovery, and all communications, negotiations, and settlement discussions by and between participants or mediators are confidential, except as specified. If the testimony of a mediator is sought to be compelled in any civil action or proceeding regarding anything said in the course of a mediation, the court is required to award reasonable attorney's fees and costs to the mediator against the person seeking the testimony. Existing law provides that a mediator may not file, and a court may not consider, any declaration or finding of any kind by the mediator, except as specified.

This bill would, among other things, revise and recast these provisions, as specified, to apply to a mediation ordered by a court or other adjudicative body, and to a mediation consultation, would define the terms "mediation," "mediator," and "mediation consultation" for this purpose and make corresponding changes.

(2) Existing law provides that if an insured party and an insurer reach an agreement proposed during mediation, the insured will have 3 business days to rescind the agreement.

This bill would provide that if such rescission occurs, the agreement may not be admitted ~~in evidence~~ or disclosed unless all the parties to the agreement agree to its disclosure.

(3) Existing law provides that records of the Department of Industrial Relations relating to labor disputes are confidential, except that any decision or award arising out of arbitration proceedings shall be a public record.

This bill would apply the provisions of this bill described in (1) above to a mediation conducted by the California State Mediation and Conciliation Service, and any person conducting the mediation. It would provide that all other records relating to labor disputes are confidential, except as specified.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 467.5 of the Business and
2 Professions Code is amended to read:

1 467.5. Notwithstanding the express application of
2 Chapter 2 (commencing with Section 1115) of Division
3 9 of the Evidence Code to mediations, all proceedings
4 conducted by a program funded pursuant to this chapter,
5 including, but not limited to, arbitrations and
6 conciliations, are subject to Chapter 2 (commencing with
7 Section 1115) of Division 9 of the Evidence Code.

8 SEC. 2. Section 1775.10 of the Code of Civil Procedure
9 is amended to read:

10 1775.10. All statements made by the parties during
11 the mediation shall be subject to Sections 703.5 and 1152,
12 and Chapter 2 (commencing with Section 1115) of
13 Division 9, of the Evidence Code.

14 SEC. 3. Section 703.5 of the Evidence Code is
15 amended to read:

16 703.5. No person presiding at any judicial or
17 quasi-judicial proceeding, and no arbitrator or mediator,
18 shall be competent to testify, in any subsequent
19 arbitration, administrative adjudication, civil action, or
20 other noncriminal proceeding, as to any statement,
21 conduct, decision, or ruling, occurring at or in
22 conjunction with the prior proceeding, except as to a
23 statement or conduct that could (a) give rise to civil or
24 criminal contempt, (b) constitute a crime, (c) be the
25 subject of investigation by the State Bar or Commission
26 on Judicial Performance, or (d) give rise to
27 disqualification proceedings under paragraph (1) or (6)
28 of subdivision (a) of Section 170.1 of the Code of Civil
29 Procedure. However, this section does not apply to a
30 mediator with regard to any mediation under Chapter 11
31 (commencing with Section 3160) of Part 2 of Division 8
32 of the Family Code.

33 SEC. 4. Chapter 2 (commencing with Section 1115)
34 is added to Division 9 of the Evidence Code, to read:

35

36

CHAPTER 2. MEDIATION

37

38 1115. For purposes of this chapter:

39 (a) "Mediation" means a process in which a neutral
40 person or persons facilitate communication between the

1 disputants to assist them in reaching a mutually
2 acceptable agreement.

3 (b) “Mediator” means a neutral person who conducts
4 a mediation. “Mediator” includes any person designated
5 by a mediator either to assist in the mediation or to
6 communicate with the participants in preparation for a
7 mediation.

8 (c) “Mediation consultation” means a communication
9 between a person and a mediator for the purpose of
10 initiating, considering, or reconvening a mediation or
11 retaining the mediator.

12 1116. (a) Nothing in this chapter expands or limits a
13 court’s authority to order participation in a dispute
14 resolution proceeding. Nothing in this chapter authorizes
15 or affects the enforceability of a contract clause in which
16 parties agree to the use of mediation.

17 (b) Nothing in this chapter makes admissible evidence
18 that is inadmissible under Section 1152 or any other
19 statute.

20 1117. (a) Except as provided in subdivision (b), this
21 chapter applies to ~~any mediation, regardless of whether~~
22 ~~participation in the mediation is voluntary, pursuant to an~~
23 ~~agreement, pursuant to order of a court or other~~
24 ~~adjudicative body, or otherwise.~~ *a mediation as defined in*
25 *Section 1115.*

26 (b) This chapter does not apply to either of the
27 following:

28 (1) A proceeding under Part 1 (commencing with
29 Section 1800) of Division 5 of the Family Code or Chapter
30 11 (commencing with Section 3160) of Part 2 of Division
31 8 of the Family Code.

32 (2) A settlement conference pursuant to Rule 222 of
33 the California Rules of Court.

34 ~~1118. (a) This chapter does not prohibit either of the~~
35 ~~following:~~

36 ~~(1) A premediation agreement that, if mediation does~~
37 ~~not fully resolve the dispute, the mediator will then act as~~
38 ~~arbitrator or otherwise render a decision in the dispute.~~

1 ~~(2) A postmediation agreement that the mediator will~~
2 ~~arbitrate or otherwise decide issues not resolved in the~~
3 ~~mediation.~~

4 ~~(b) If a dispute is governed by an agreement described~~
5 ~~in subdivision (a), in arbitrating or otherwise deciding all~~
6 ~~or part of the dispute, the person who served as mediator~~
7 ~~may not consider any information from the mediation~~
8 ~~that is inadmissible or protected from disclosure under~~
9 ~~this chapter, unless all of the parties to the mediation~~
10 ~~expressly agree in writing, or orally in accordance with~~
11 ~~Section 1119, before or after the mediation that the~~
12 ~~person may use specific information from the mediation.~~

13 1119. An oral agreement “in accordance with Section
14 1119” means an oral agreement that satisfies all of the
15 following conditions:

16 (a) The oral agreement is recorded by a court
17 reporter, tape recorder, or other reliable means of sound
18 recording.

19 (b) The terms of the oral agreement are recited on the
20 record in the presence of the parties and the mediator,
21 and the parties express on the record that they agree to
22 the terms recited.

23 (c) The parties to the oral agreement expressly state
24 on the record that the agreement is enforceable or
25 binding or words to that effect.

26 *(d) The recording is transcribed and the transcript is*
27 *executed by the parties within 72 hours after it is*
28 *recorded.*

29 1120. (a) Except as otherwise expressly provided by
30 statute, no evidence of anything said or any admission
31 made for the purpose of, in the course of, or pursuant to,
32 a mediation or a mediation consultation is admissible ~~in~~
33 ~~evidence~~ or subject to discovery, and disclosure of the
34 evidence shall not be compelled, in any arbitration,
35 administrative adjudication, civil action, or other
36 noncriminal proceeding in which, pursuant to law,
37 testimony can be compelled to be given.

38 (b) Except as otherwise expressly provided by statute,
39 no document, or writing as defined in Section 250, or copy
40 of a document or writing, that is prepared for the purpose

1 of, in the course of, or pursuant to, a mediation or a
2 mediation consultation, is admissible ~~in evidence~~ or
3 subject to discovery, and disclosure of the document or
4 writing shall not be compelled, in any arbitration,
5 administrative adjudication, civil action, or other
6 noncriminal proceeding in which, pursuant to law,
7 testimony can be compelled to be given.

8 (c) All communications, negotiations, or settlement
9 discussions by and between participants in the course of
10 a mediation or a mediation consultation shall remain
11 confidential.

12 1121. (a) Notwithstanding any other provision of this
13 chapter, evidence otherwise admissible or subject to
14 discovery outside of a mediation or a mediation
15 consultation shall not be or become inadmissible or
16 protected from disclosure solely by reason of its
17 introduction or use in a mediation or a mediation
18 consultation.

19 (b) This chapter does not limit any of the following:

20 (1) The admissibility of an agreement to mediate a
21 dispute.

22 (2) The effect of an agreement not to take a default or
23 an agreement to extend the time within which to act or
24 refrain from acting in a pending civil action.

25 (3) Disclosure of the mere fact that a mediator has
26 served, is serving, will serve, or was contacted about
27 serving as a mediator in a dispute.

28 1122. Neither a mediator nor anyone else may submit
29 to a court or other adjudicative body, and a court or other
30 adjudicative body may not consider, any report,
31 assessment, evaluation, recommendation, or finding of
32 any kind by the mediator concerning a mediation
33 conducted by the mediator, other than a report that is
34 mandated by court rule or other law and that states only
35 whether an agreement was reached, unless all parties to
36 the mediation expressly agree otherwise in writing, or
37 orally in accordance with Section 1119.

38 1123. (a) Notwithstanding any other provision of this
39 chapter, a communication, document, or any writing as
40 defined in Section 250, that is made or prepared for the

1 purpose of, or in the course of, or pursuant to, a mediation
2 or a mediation consultation, is not made inadmissible ~~into~~
3 ~~evidence~~, or protected from disclosure, by provisions of
4 this chapter if either of the following conditions is
5 satisfied:

6 (1) All persons who conduct or otherwise participate
7 in the mediation expressly agree in writing, or orally in
8 accordance with Section 1119, to disclosure of the
9 communication, document, or writing.

10 (2) The communication, document, or writing was
11 prepared by or on behalf of fewer than all the mediation
12 participants, those participants expressly agree in
13 writing, or orally in accordance with Section 1119, to its
14 disclosure, and the communication, document, or writing
15 does not disclose anything said or done or any admission
16 made in the course of the mediation.

17 (b) For purposes of subdivision (a), if the neutral
18 person who conducts a mediation expressly agrees to
19 disclosure, that agreement also binds any other person
20 described in subdivision (b) of Section 1115.

21 1124. (a) Notwithstanding any other provision of this
22 chapter, an executed written settlement agreement
23 prepared in the course of, or pursuant to, a mediation, is
24 not made inadmissible ~~into evidence~~, or protected from
25 disclosure, by provisions of this chapter if any of the
26 following conditions is satisfied:

27 (1) The agreement provides that it is admissible or
28 subject to disclosure, or words to that effect.

29 (2) The agreement provides that it is enforceable or
30 binding or words to that effect.

31 (3) All parties to the agreement expressly agree in
32 writing, or orally in accordance with Section 1119, to its
33 disclosure.

34 (4) The agreement is used to show fraud, duress, or
35 illegality that is relevant to an issue in dispute.

36 (b) ~~Unless~~ *For purposes of this chapter, unless* the
37 parties expressly agree otherwise, in writing or orally in
38 accordance with Section 1119, ~~when a written settlement~~
39 ~~fully resolving the dispute is fully executed, the mediation~~
40 ~~ends.~~

1 ~~(e) Unless the parties expressly agree otherwise, in~~
2 ~~writing or orally in accordance with Section 1119, when~~
3 ~~a written settlement partially resolving the dispute is fully~~
4 ~~executed, the mediation ends as to the issues resolved. the~~
5 ~~mediation ends when the parties execute a written~~
6 ~~settlement agreement resolving the dispute.~~

7 *(c) Nothing in this section shall preclude a party from*
8 *ending the mediation without reaching an agreement.*

9 1125. (a) Notwithstanding any other provision of this
10 chapter, an oral agreement made in the course of, or
11 pursuant to, a mediation is not made inadmissible ~~into~~
12 ~~evidence~~, or protected from disclosure, by the provisions
13 of this chapter if any of the following conditions is
14 satisfied:

15 (1) The agreement is in accordance with Section 1119.

16 (2) The agreement is in accordance with subdivisions
17 ~~(a) and (b)~~, *(b)*, and *(d)* of Section 1119, and all parties
18 to the agreement expressly agree, in writing or orally in
19 accordance with Section 1119, to disclosure of the
20 agreement.

21 (3) The agreement is in accordance with subdivisions
22 ~~(a) and (b)~~, *(b)*, and *(d)* of Section 1119, and the
23 agreement is used to show fraud, duress, or illegality that
24 is relevant to an issue in dispute.

25 ~~(b) Unless~~ *For purposes of this chapter, unless* the
26 parties expressly agree otherwise, in writing or orally in
27 accordance with Section 1119, ~~when an oral agreement~~
28 ~~fully resolving a dispute is reached in accordance with~~
29 ~~Section 1119, the mediation ends.~~

30 ~~(e) Unless the parties expressly agree otherwise, in~~
31 ~~writing or orally in accordance with Section 1119, when~~
32 ~~an oral agreement partially resolving a dispute is reached~~
33 ~~in accordance with Section 1119, the mediation ends as to~~
34 ~~the issues resolved. the mediation ends when an oral~~
35 ~~agreement resolving the dispute is reached in accordance~~
36 ~~with Section 1119.~~

37 *(c) Nothing in this section shall preclude a party from*
38 *ending the mediation without reaching an agreement.*

39 1126. If a person subpoenas or otherwise seeks to
40 compel a mediator to testify or produce a document, and

1 the court or other adjudicative body determines that the
2 testimony or document is inadmissible or protected from
3 disclosure under Section 703.5 or this chapter, the court
4 or adjudicative body making the determination shall
5 award reasonable attorney's fees and costs to the
6 mediator against the person seeking the testimony or
7 document.

8 1127. Any reference to a mediation, or a declaration
9 under Section 1125, during any subsequent trial is an
10 irregularity in the proceedings of the trial for the
11 purposes of Section 657 of the Code of Civil Procedure.
12 Any reference to a mediation, or a declaration under
13 Section 1125, during any other subsequent noncriminal
14 proceeding is grounds for vacating or modifying the
15 decision in that proceeding, in whole or in part, and
16 granting a new or further hearing on all or part of the
17 issues, if the reference materially affected the substantial
18 rights of the party requesting relief.

19 SEC. 5. The heading of Chapter 2 (commencing with
20 Section 1150) of Division 9 of the Evidence Code is
21 amended and renumbered to read:

22
23 CHAPTER 3. OTHER EVIDENCE AFFECTED OR EXCLUDED
24 BY EXTRINSIC POLICIES
25

26 SEC. 6. Section 1152.5 of the Evidence Code is
27 repealed.

28 SEC. 7. Section 1152.6 of the Evidence Code is
29 repealed.

30 SEC. 8. Section 66032 of the Government Code is
31 amended to read:

32 66032. (a) Notwithstanding any provision of law to
33 the contrary, all time limits with respect to an action shall
34 be tolled while the mediator conducts the mediation,
35 pursuant to this chapter.

36 (b) Mediations conducted by a mediator pursuant to
37 this chapter that involve less than a quorum of a
38 legislative body or a state body shall not be considered
39 meetings of a legislative body pursuant to the Ralph M.
40 Brown Act (Chapter 9 (commencing with Section 54950))

1 of Part 1 of Division 2 of Title 5), nor shall they be
2 considered meetings of a state body pursuant to the
3 Bagley-Keene Open Meeting Act (Article 9
4 (commencing with Section 11120) of Chapter 1 of Part 1
5 of Division 3 of Title 2).

6 (c) Any action taken regarding mediation conducted
7 pursuant to this chapter shall be taken in accordance with
8 the provisions of current law.

9 (d) Ninety days after the commencement of the
10 mediation, and every 90 days thereafter, the action shall
11 be reactivated unless the parties to the action do either
12 of the following:

13 (1) Arrive at a settlement and implement it in
14 accordance with the provisions of current law.

15 (2) Agree by written stipulation to extend the
16 mediation for another 90-day period.

17 (e) Section 703.5 and Chapter 2 (commencing with
18 Section 1115) of Division 9 of the Evidence Code apply to
19 any mediation conducted pursuant to this chapter.

20 SEC. 9. Section 66033 of the Government Code is
21 amended to read:

22 66033. (a) At the end of the mediation, the mediator
23 shall file a report with the Office of Permit Assistance,
24 consistent with Chapter 2 (commencing with Section
25 1115) of Division 9 of the Evidence Code, containing each
26 of the following:

27 (1) The title of the action.

28 (2) The names of the parties to the action.

29 (3) An estimate of the costs avoided, if any, because
30 the parties used mediation instead of litigation to resolve
31 their dispute.

32 (b) The sole purpose of the report required by this
33 section is the collection of information needed by the
34 office to prepare its report to the Legislature pursuant to
35 Section 66036.

36 SEC. 10. Section 10089.80 of the Insurance Code is
37 amended to read:

38 10089.80. (a) The representatives of the insurer shall
39 know the facts of the case and be familiar with the
40 allegations of the complainant. The insurer or the

1 insurer's representative shall produce at the settlement
2 conference a copy of the policy and all documents from
3 the claims file relevant to the degree of loss, value of the
4 claim, and the fact or extent of damage.

5 The insured shall produce, to the extent available, all
6 documents relevant to the degree of loss, value of the
7 claim, and the fact or extent of damage.

8 The mediator may also order production of other
9 documents that the mediator determines to be relevant
10 to the issues under mediation. If a party declines to
11 comply with that order, the mediator may appeal to the
12 commissioner for a determination of whether the
13 documents requested should be produced. The
14 commissioner shall make a determination within 21 days.
15 However, the party ordered to produce the documents
16 shall not be required to produce while the issue is before
17 the commissioner in this 21-day period. If the ruling is in
18 favor of production, any insurer that is subject to an order
19 to participate in mediation issued under subdivision (a)
20 of Section 10089.75 shall comply with the order to
21 produce. Insureds, and those insurers that are not subject
22 to an order to participate in mediation, shall produce the
23 documents or decline to participate further in the
24 mediation after a ruling by the commissioner requiring
25 the production of those other documents. Declination of
26 mediation by the insurer under this section may be
27 considered by the commissioner in exercising authority
28 under subdivision (a) of Section 10089.75.

29 The mediator shall have the authority to protect from
30 disclosure information that the mediator determines to
31 be privileged, including, but not limited to, information
32 protected by the attorney-client or work-product
33 privileges, or to be otherwise confidential.

34 (b) The mediator shall determine prior to the
35 mediation conference whether the insured will be
36 represented by counsel at the mediation. The mediator
37 shall inform the insurer whether the insured will be
38 represented by counsel at the mediation conference. If
39 the insured is represented by counsel at the mediation
40 conference, the insurer's counsel may be present. If the

1 insured is not represented by counsel at the mediation
2 conference, then no counsel may be present.

3 (c) Section 703.5 and Chapter 2 (commencing with
4 Section 1115) of Division 9 of the Evidence Code apply to
5 a mediation conducted under this chapter.

6 (d) The statements made by the parties, negotiations
7 between the parties, and documents produced at the
8 mediation are confidential. However, this confidentiality
9 shall not restrict the access of the department to
10 documents or other information the department seeks in
11 order to evaluate the mediation program or to comply
12 with reporting requirements. This subdivision does not
13 affect the discoverability or admissibility of documents
14 that are otherwise discoverable or admissible.

15 SEC. 11. Section 10089.82 of the Insurance Code is
16 amended to read:

17 10089.82. (a) An insured may not be required to use
18 the department's mediation process. An insurer may not
19 be required to use the department's mediation process,
20 except as provided in Section 10089.75.

21 (b) Neither the insurer nor the insured is required to
22 accept an agreement proposed during the mediation.

23 (c) If the parties agree to a settlement agreement, the
24 insured will have three business days to rescind the
25 agreement. Notwithstanding Chapter 2 (commencing
26 with Section 1115) of Division 9 of the Evidence Code, if
27 the insured rescinds the agreement, it may not be
28 admitted in evidence or disclosed unless the insured and
29 all other parties to the agreement expressly agree to its
30 disclosure. If the agreement is not rescinded by the
31 insured, it is binding on the insured and the insurer, and
32 acts as a release of all specific claims for damages known
33 at the time of the mediation presented and agreed upon
34 in the mediation conference. If counsel for the insured is
35 present at the mediation conference and a settlement is
36 agreed upon that is signed by the insured's counsel, the
37 agreement is immediately binding on the insured and
38 may not be rescinded.

1 (d) This section does not affect rights under existing
2 law for claims for damage that were undetected at the
3 time of the settlement conference.

4 (e) All settlements reached as a result of
5 department-referred mediation shall address only those
6 issues raised for the purpose of resolution. Settlements
7 and any accompanying releases are not effective to settle
8 or resolve any claim not addressed by the mediator for the
9 purpose of resolution, nor any claim that the insured may
10 have related to the insurer's conduct in handling the
11 claim.

12 Referral to mediation or the pendency of a mediation
13 under this article is not a basis to prevent or stay the filing
14 of civil litigation arising in whole or in part out of the same
15 facts. Any applicable statute of limitations is tolled for the
16 number of days beginning from the referral to mediation
17 until the date on which the mediation is either completed
18 or declined, or the date on which the insured fails to
19 appear for a scheduled mediation for the second time, or,
20 in the event that a settlement is completed, the expiration
21 of any applicable three business day cooling off period.

22 SEC. 12. Section 65 of the Labor Code is amended to
23 read:

24 65. The department may investigate and mediate
25 labor disputes providing any bona fide party to this type
26 of dispute requests intervention by the department and
27 the department may proffer its services to both parties
28 when work stoppage is threatened and neither party
29 requests intervention. In the interest of preventing labor
30 disputes the department shall endeavor to promote
31 sound union-employer relationships. The department
32 may arbitrate or arrange for the selection of boards of
33 arbitration on such terms as all of the bona fide parties to
34 the dispute may agree upon. Any decision or award
35 arising out of an arbitration conducted pursuant to this
36 section is a public record. Section 703.5 and Chapter 2
37 (commencing with Section 1115) of Division 9 of the
38 Evidence Code apply to a mediation conducted by the
39 California State Mediation and Conciliation Service, and
40 any person conducting the mediation. All other records

1 of the department relating to labor disputes are
2 confidential.

3 SEC. 13. Section 350 of the Welfare and Institutions
4 Code is amended to read:

5 350. (a) (1) The judge of the juvenile court shall
6 control all proceedings during the hearings with a view
7 to the expeditious and effective ascertainment of the
8 jurisdictional facts and the ascertainment of all
9 information relative to the present condition and future
10 welfare of the person upon whose behalf the petition is
11 brought. Except where there is a contested issue of fact
12 or law, the proceedings shall be conducted in an informal
13 nonadversary atmosphere with a view to obtaining the
14 maximum cooperation of the minor upon whose behalf
15 the petition is brought and all persons interested in his or
16 her welfare with any provisions that the court may make
17 for the disposition and care of the minor.

18 (2) Each juvenile court is encouraged to develop a
19 dependency mediation program to provide a
20 problem-solving forum for all interested persons to
21 develop a plan in the best interests of the child,
22 emphasizing family preservation and strengthening. The
23 Legislature finds that mediation of these matters assists
24 the court in resolving conflict, and helps the court to
25 intervene in a constructive manner in those cases where
26 court intervention is necessary. Notwithstanding any
27 other provision of law, no person, except the mediator,
28 who is required to report suspected child abuse pursuant
29 to the Child Abuse and Neglect Reporting Act (Article 2.5
30 (commencing with Section 11164) of Chapter 2 of Title
31 1 of Part 4 of the Penal Code), shall be exempted from
32 those requirements under Chapter 2 (commencing with
33 Section 1115) of Division 9 of the Evidence Code because
34 he or she agreed to participate in a dependency
35 mediation program established in the juvenile court.

36 If a dependency mediation program has been
37 established in a juvenile court, and if mediation is
38 requested by any person who the judge or referee deems
39 to have a direct and legitimate interest in the particular
40 case, or on the court's own motion, the matter may be set

1 for confidential mediation to develop a plan in the best
2 interests of the child, utilizing resources within the family
3 first and within the community if required.

4 (b) The testimony of a minor may be taken in
5 chambers and outside the presence of the minor's parent
6 or parents, if the minor's parent or parents are
7 represented by counsel, the counsel is present and any of
8 the following circumstances exist:

9 (1) The court determines that testimony in chambers
10 is necessary to ensure truthful testimony.

11 (2) The minor is likely to be intimidated by a formal
12 courtroom setting.

13 (3) The minor is afraid to testify in front of his or her
14 parent or parents.

15 After testimony in chambers, the parent or parents of
16 the minor may elect to have the court reporter read back
17 the testimony or have the testimony summarized by
18 counsel for the parent or parents.

19 The testimony of a minor also may be taken in
20 chambers and outside the presence of the guardian or
21 guardians of a minor under the circumstances specified
22 in this subdivision.

23 (c) At any hearing in which the probation department
24 bears the burden of proof, after the presentation of
25 evidence on behalf of the probation department and the
26 minor has been closed, the court, on motion of the minor,
27 parent, or guardian, or on its own motion, shall order
28 whatever action the law requires of it if the court, upon
29 weighing all of the evidence then before it, finds that the
30 burden of proof has not been met. That action includes,
31 but is not limited to, the dismissal of the petition and
32 release of the minor at a jurisdictional hearing, the return
33 of the minor at an out-of-home review held prior to the
34 permanency planning hearing, or the termination of
35 jurisdiction at an in-home review. If the motion is not
36 granted, the parent or guardian may offer evidence
37 without first having reserved that right.